IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4400 of 2001
to
FIRST APPEALNo 4407 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT
Versus
SOLANKI BALVANTSINH SHANABHAI

Appearance:
Mr.R.C.Kodekar, Addl.GOVERNMENT PLEADER
for Petitioner No. 1-3
MR VIJAY N RAVAL for Respondent No. 1
..... for Respondent No. 2-6

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 26/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

Admit. Learned Advocate Mr.Vijay N Raval appears for the respondents in all matters and waives service of process of admission.

The learned A.G.P. appearing in the matters contended that there is a limited challenge to the award made by the Special Land Acquisition Officer with regard to the determination of price. That award was based on the record produced before the Court vide exh. 19. The learned advocate for the respondents appearing in the matters submitted that the matters are required to be disposed of on this short point and no further points are to be urged and therefore we are disposing of the matters finally at this stage.

Notifications under Sec. 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was published on 19.9.91. The agricultural lands situated at village Katol, Taluka : Kalol, District : Panchmahals were to be acquired. There is no dispute with regard to the procedure followed by the Land Acquisition Officer in accordance with law while acquiring the land and therefore the same is not required to be considered and referred save and except that the Land Acquisition Officer offered an amount of Rs.3.20ps. per sq.mtr. by way of compensation by an award dated 28.9.92. Against the award made by the Special Land Acquisition Officer, the claimants sought reference and the Reference Court, on appreciation of evidence and relying on the decision rendered in Land Reference Case no. 385/89 dated 4.5.00 produced on record vide exh. 19, determined the market price.

Learned A.G.P. appearing in the matters submitted that the Reference Court has committed serious error while calculating the amount. No doubt, for the lands covered under L.A.R.no. 385/89, notification under Sec. 4 of the Act was published on 16.9.86 and the Land Acquisition Officer awarded a sum of Rs.2/- per sq.mtr. The Reference Court awarded additional amount of Rs.12/per sq.mtr. and thus in all Rs.14/- per sq.mtr. were awarded to the claimants whose lands were covered by notification dated 16.9.86. The lands covered in the aforesaid notification were from village Katol. It is required to be noted that considering the various decisions, Reference Court thought it proper to give rise of 10% in price every year. According to the learned A.G.P., the Reference Court was required to consider strictly according to that principle. No doubt, the lands are identical, similar in all aspects viz. fertility and taking these aspects into consideration,

the Reference Court was required to determine the amount by giving rise of 10% per year. Even if this is considered, then the total amount would be Rs.21/- per sq.mtr. and not Rs.23.20ps. per sq.mtr. as considered by the Reference Court. This is the only contention urged before us. The Reference Court in the instant case while determining the market price omitted to consider the amount awarded to the claimants. In the instant case, the Land Acquisition Officer awarded Rs.3.20ps. per sq.mtr. The Reference Court held that the claimants are entitled to get Rs.20/- per sq.mtr. over and above the award made by the Land Acquisition Officer and thus it held that the claimants are entitled to get in all Rs.23.20ps. per sq.mtr. In our opinion, the learned A.G.P. is quite justified in pointing out that the Reference Court has committed serious error in calculation and in no case the price would be more than Rs.21/- per sq.mtr. Learned Advocate for the claimants was not able to put forth anything to dislodge the aforesaid contention.

This is the only contention urged before us and we allow the appeals partly and we hold that the claimants are entitled to Rs.21/- per sq.mtr. in all and not Rs.23.20ps. per sq.mtr. as held by the Reference Court. The award shall stand modified accordingly. The appeals are allowed with no order as to cost.

It goes without saying that all statutory benefits as recognized under the law will have to be paid to the claimants including interest on solatium as held by the Apex Court in the case of SUNDER vs. UNION OF INDIA rendered on 19/09/2001 by the Constitution Bench. The Apex Court in the said judgment pointed out as under:

"We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati & Ors. (supra)

`Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable

under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'

In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the persons entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

On behalf of the claimants, it is urged that they are waiting for compensation since long and the State should be directed to make payment at the earliest. Taking into consideration the request of the learned advocate, we direct the appellant herein to make payment of 50% of the amount to the claimants within a period of 3 months from today after proper verification and the remaining 50% of the amount within a period of 3 months thereafter in the same manner.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

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